

STATE AND LOCAL GOVERNMENT

Presented to the Board of Oil, Gas, and Mining on August 28, 2013

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I. *Dillon's Rule v. the Home Rule*

A. Dillon's Rule: A local government has only those powers that the State has granted it.

Policy basis: The State would protect minorities against abuses of power—such as, corruption, graft, and favoritism—that the smaller, local government might commit.

B. Home Rule: A local government has inherent powers to regulate local matters.

Policy basis: Respect the right of people to govern themselves and grassroots activism. As well as trust in the political system—that is, allowing elections to correct abuses of power.

1) Statutory Home Rule: These inherent powers can be preempted by a State legislature's specific acts. General acts will usually not suffice.

2) Constitutional Home Rule: These inherent powers can be preempted only by constitutional amendment or federal law.

II. *Preemption Doctrine*

A. Generally: A State can preempt local laws like the federal government can State laws.

1) Express Preemption: Is when the State constitution or statutes have explicitly declared that the local government must not regulate in the arena.

2) Implied Preemption: Is when the State laws implicitly preempt the local governments from regulating within the arena. There are two types of implied preemption the court regularly recognizes:

a) Field Preemption: Is when the State laws in an arena are so pervasive and comprehensive that there is no room for local regulation.

b) Operational Preemption: Is when there is direct conflict between State and local government laws and there is no way to harmonize the regulations.

III. *Applied to Utah, Colorado, and North Dakota*

A. Utah: There is not a lot of case law defining the relationship between the State and the local governments, but it seems that Utah has adopted something close to the statutory home-rule framework.

1. State v. Hutchinson, 624 P2d 1116 (Utah 1980) (3-2 decision): The Utah Supreme Court clearly rejects the strict application of Dillon's rule and calls for courts to interpret any grants of power liberally in favor of the local government.
2. Grants of authority: The Utah Constitution and Legislature have given broad grants of authority to local governments. The Legislature also gave broad grants of authority to the Board and Division. The attached Addendum lays out a collection of such grants of authority.

B. Colorado: Colorado has both statutory municipalities and home-rule municipalities.

1. Statutory municipalities: Enjoy only those powers granted by statute, and those powers can be preempted by the Legislature.
2. Home-Rule municipalities: On matters of purely local concern, the municipality's regulations will preempt the Legislature's actions. On matters of state and local concern and where there is conflict, the Legislature's actions will preempt the local actions.

In these situations, the Colorado courts will weigh four factors:

- (1) the need for statewide uniformity of regulation;
- (2) the extraterritorial impact of local regulation;
- (3) whether the matter has traditionally been regulated at the state or local level; and
- (4) whether the constitution specifically commits the matter to state or local regulation.

Webb v. City of Black Hawk, 295 P.3d 480 (Colo. 2013).

3. Case Law:

- a) Statutory Municipalities May Regulate Oil and Gas: The Colorado Supreme Court held that a statutory county could enact land-use regulations that were applicable to oil and gas operations because "the state's interest in oil and gas activities is not so patently dominant over the county's land use control." Cnty. Comm'rs v. Bowen/Edwards Assocs., 830 P.2d 1045, 1058 (Colo. 1992).
- b) Home-Rule Municipalities Must Not Ban Oil and Gas Development: The Colorado Supreme Court also held that a home-rule local government's ban on oil and gas

drilling within its boundaries was preempted because of the state's interest in efficient development and production of oil and gas. Voss v. Lundvall Bros., Inc., 830 P.2d 1061, 1069 (Colo. 1992).

C. North Dakota: North Dakota has both statutory municipalities and home-rule municipalities.

1. Statutory municipalities: Enjoy only those powers granted by statute, and those powers can be preempted by the Legislature.
2. Home-Rule municipalities: North Dakota's constitution allows the Legislature to grant certain municipalities Home-Rule powers that allows the municipalities to supersede the Legislature's statutes. The Legislature has granted counties and cities such authority. The courts interpret that grant of authority strictly, against the municipality. But once the court finds the authority, the municipality can preempt State law.
3. Case Law: There is no case law where the State's oil and gas agency has had a conflict with municipal regulations. The sole case related is one where the courts upheld a County's decision to rezone an area to allow for drilling. Dakota Res. Council v. Stark Cnty. Bd. of Cnty. Comm'rs, 2012 ND 114.

ADDENDUM

I. *Constitutional Grants of Authority*

- A. Counties: “The counties . . . are recognized as legal subdivisions of this State. The counties now existing shall continue until changed as provided by statute.” Utah Const. art. 11 § 1.
- B. Chartered Cities: “Each [chartered] city . . . ***shall have . . . the authority to exercise all powers relating to municipal affairs, . . . and no enumeration of powers in this constitution or any law shall be deemed to limit or restrict the general grant of authority hereby conferred***; but this grant of authority shall not . . . be deemed to limit or restrict the power of the Legislature in matters relating to State affairs, to enact general laws applicable alike to all cities of the State .” Utah Const. art. 11 § 5 (emphasis added).

II. *Statutory Grants of Authority*

A. Counties:

1. General Grants of Authority:

- a) “A county may . . . make all regulations, not repugnant to law, . . . as are ***necessary and proper to provide for the safety, and preserve the health, promote the prosperity***, improve the morals, peace, and good order, comfort, and convenience of the county and its inhabitants, and for the protection of property in the county” Utah Code § 17-53-223(a) (emphasis added).
- b) “[A] county may . . . exercise a power, or perform a function that is reasonably related to the safety, health, morals, and welfare of county inhabitants, except as limited or prohibited by statute.” Utah Code § 17-50-301 (1) (a).

2. County [and Municipal] Land Use, Development, and Management Act:

a) Section 102:

“The purposes of [the County Land Use, Development, and Management Act] is] ***to provide for the health, safety, and welfare***, and promote the prosperity, improve the morals, peace and good order, comfort, convenience, and aesthetics of each county and its present and future inhabitants and businesses, to protect the tax base . . . , to foster the state’s agricultural and other industries, to protect both urban and nonurban development . . . , to provide fundamental fairness in land use regulation, and to protect property values.

To accomplish the[se] purposes . . . , ***counties may enact all ordinances . . . and rules and may enter into other forms of land use controls*** . . . that they consider necessary or appropriate for the use and development of land within the unincorporated area of the county, including ordinances . . . , [and] rules . . . governing uses, density, open spaces, structures, buildings, . . . light and air, air quality, transportation . . . , infrastructure, . . . fundamental fairness in land use regulation, considerations of surrounding land uses and the balance of the foregoing purposes with a landowner's private property interests . . . ***unless expressly prohibited by law***. Utah Code § 17-27a-102(1) (emphasis added); *id.* § 10-9a-102 (granting the same powers to municipalities).

- b) Section 104: “[A] county may enact an ordinance imposing ***stricter requirements or higher standards*** than are required by this chapter.” Utah Code § 17-27a-104 (emphasis added); *id.* § 10-9a-104 (granting the same powers to municipalities).

B. Board and Division of Oil, Gas, and Mining:

1. Declaration of Public Interest: “[It is] in the public interest to foster, encourage, and promote the development, production, and utilization . . . of oil and gas . . . in such a manner as will prevent waste; to authorize and to provide for the operation and development of oil and gas properties in such a manner that a greater ultimate recovery of oil and gas may be obtained and that the correlative rights of all owners may be fully protected; ***to provide exclusive state authority over oil and gas exploration and development*** as regulated under the provisions of this chapter; to encourage, authorize, and provide for voluntary agreements for cycling, recycling, pressure maintenance, and secondary recovery operations in order that the greatest possible economic recovery of oil and gas may be obtained . . . to the end that the land owners, the royalty owners, the producers, and the general public may . . . enjoy the greatest possible good” Utah Code § 40-6-1.
2. Exclusive Authority of the Board:

“The ***board has exclusive jurisdiction*** over:

 - (a) class II injection wells . . . ; and
 - (b) pits and ponds in relation to these injection wells.”

Utah Code § 40-6-5(5) (emphasis added).

3. Authority of the Board:

“The ***board has the authority*** to regulate:

(a) all operations for and related to the production of oil or gas including:

(i) drilling, testing, equipping, completing, operating, producing, and plugging of wells; and

(ii) reclamation of sites;

(b) the spacing and ***location of wells***”

Utah Code § 4-6-5(3) (emphasis added).

4. Restriction of Authority: “This act ***shall never*** be construed to authorize the board . . . to . . . ***requir[e] restriction of production of any pool*** . . . to an amount less than the . . . pool can produce ***unless such restriction is necessary to prevent waste and protect correlative rights***” Utah Code § 4-6-13 (emphasis added).